BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY GRAYS HARBOR COUNTY TO ALLEN SLENES, SLADE GORTON, ATTORNEY GENERAL, Appellant, v. GRAYS HARBOR COUNTY, ALLEN SLENES, and STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondents.	SHB No. 231 MAJORITY FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A formal hearing in this matter was held in Westport, Washington, on Thursday and Friday, April 28 and 29, 1977 before the Shorelines Hearings Board: Chris Smith, Dave J. Mooney, Robert E. Beaty, Robert F. Hintz and William A. Johnson. Ellen D. Peterson presided.

Assistant Attorney General Carol A. Smith represented appellant Slade Gorton, Attorney General; respondent Allen Slenes appeared pro se; Deputy Prosecutor Dennis R. Colwell represented Grays Harbor County;

Assistant Attorney General Jeffrey D. Goltz appeared for respondent Department of Ecology.

Having heard the testimony or read the transcript, having examined the exhibits, having read arguments of counsel, the Board comes to these

FINDINGS OF FACT

I

In March, 1976, Allen Slenes applied to Grays Harbor County for a permit to construct a single family dwelling on his property identified as Lots 21, 22, 23 of Ellingson's replat of Lot 4 of Bonge's tract in Section 25, Township 16 North, Range 12 W, W.M., Grays Harbor County. The property, located approximately three miles south of Westport, Washington, is on a shoreline of statewide significance and is in an area which has been designated "Conservancy" within the Grays Harbor Master Program. The Conservancy designation extends 200 feet east or landward of the marram grass line, the first line of vegetation on the beach.

II

A notice that Mr. Slenes had applied for a "substantial development permit" for construction of a single family dwelling on the dunes was published in the local paper on March 29 and April 5, 1976.

Following a public hearing on the application, a variance permit was issued by Grays Harbor County to Mr. Slenes on May 13, 1976 for construction of "single family residence within required setback from marram grass line along ocean dunes." The variance permit as conditioned was approved by the Department of Ecology on June 8, 1976; a request for review of the permit as granted and approved was filed by the Attorney General on July 8, 1976.

III

The Grays Harbor Master Program provides in relevant part:

ADMINISTRATION POLICIES:

. . .

2. Shorelines of Statewide Significance: . . . .

(a) Recognize and protect the statewide interest over local interest. . . .

(b) Preserve the natural character of the shorelines. . . .

-Minimizing man-made intrusion on the shorelines
-Where intensive development already occurs, upgrade and redevelop those areas, before extending high intensity uses to low intensity use or undeveloped areas.

(c) Prefer the long-term over short-term benefit. This can be accomplished by:

-Preserving the shorelines for future generations and severely limiting anything that will detrimentally alter the natural conditions.

. . . . Chapter 2.2, p. 25.

CHAPTER 13 Minimum Lot Sizes and Water Frontage:

(1) The minimum lot size in the Natural and Conservancy Environments shall be five (5) acres.

. . . . p. 41.

CHAPTER 16 Public Access Regulations. . . .

(1) Shorelines of Statewide Significance

(a) Residential . . . development . . . shall provide a linear public easement . . . at least 25 feet wide along the ordinary high water line . . . .

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(1) Purpose: The Conservancy Environment is inteded [sic] to protect lands, wetlands, and water of economic, recreational and natural value. Development for purposes which would be detrimental to resource capability and utilization is not permitted.

. . .

(5) Setbacks: . . . "...provided that on accreted ocean front land no structure, surface paving or earth changing shall be permitted within 200 feet of the line of marram grass vegetation except that minor surface paving and earth changes may be permitted in said 200 feet zone provided such action is necessitiated by a permitted residence lying shoreward of said zone and further provided that no modification or adverse impact is caused to the primary dune system."

. . . . pg. 49.

CHAPTER 24 Nonconformities.

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Sites: Sites lawfully created as a separate parcel of land prior to the adoption of this Resolution where such site is less than the lot size specified in Chapter 13 shall be considered a legal development site subject to the maximum coverage limitation and all other requirements of the Master Program. p. 50.

IV

The Slenes lots at issue are bounded on the north by a natural dune expanse forming part of the southern boundary of Twin Harbors State Park, on the east by an undeveloped lot now part of the Park[1], on the south by an access or "gap" road to the beach (Bonge Avenue), and on the

1. The land (Lots 18 and 19) immediately to the east of the State Park lot is also owned by Mr. Slenes and to date is undeveloped.

west by the beach (Seashore Conservation Area).[2] Mr. Slenes agreed during his testimony to execute an easement on the beach as required by Chapter 16 of the Master Program. No development exists south of the access road for approximately three eighths of a mile.

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Moving seaward, Lots 21, 22 and 23 are 51.47' x 97.15', 51.47' x 97.15' and 50.90/70' x 97.15' respectively; the total area is less than five acres. These lots were platted and recorded in 1956 prior to the adoption of the Grays Harbor Master Program.

The western boundary of Lot 23 as designated on the site plan accompanying Mr. Slenes application does not comport with the lot line as identified by the Planning Director (Tr. p. 153), as found in the plat description (Slenes Exhibit R-1) or as cited in appellant's pleadings (V-4). This boundary is particularly inconclusive with regard to its critical location relative to the marram grass line. No reconciliation of these conflicting "facts" is possible. The specific siting of the proposed dwelling on the dune is also impossible to ascertain from the evidence presented.

The Slenes lots at issue are one of ten platted properties on the south shore of Grays Harbor County which would require a variance from the setback requirements of the master program prior to construction.

VI

Grays Harbor County contains twenty-four miles of coastline dunes,

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2. That portion of the beach from ordinary high tide to extreme low water under the control of the State Parks and Recreation Commission for the benefit of the public.

a limited and diminishing natural resource. These coastal dunes were formed and continue to develop primarily as a result of the transport and deposition of sediment along the shoreline.

Basically, formation and retention of the dunes depend upon the existence and interaction of wind and sand. The dune system is also influenced by the vegetation common to the region which acts to stabilize the mobile sand.

Dune areas are comprised of three basic environmental systems: elevated foredunes fronting the ocean, deflation plains forming behind or on the lee of the dune, and a more stabilized back-land system of mature deflation plains and secondary or back dunes.

The first ridge of vegetated sand parallelling the beach above the normal high tide line is known as the primary or foredune. The foredune is stabilized by its vegetative cover of American Dunegrass and the European or Marram Beachgrass which thrive under sand burial conditions.

The foredune acts as a natural buffer for winds and coastal flooding. The elevated dune both decreases the energy of the wave action and performs as a dike in holding back the waters. While structures can also represent a wall against the elements, they are less reliable as flood deterrents than the natural dune because of potential erosion and undercutting.

VII

The primary or foredune on the Slenes lots has a relatively steep and narrow-seaward front with no hummock dunes grading down into the deflation plain. It has an average height of fifteen feet and

an average width of 100' at its base from the marram grass line to the heel of the back of the dune.

Proximity of the Bonge access road increases the hazard of storm entry onto the subject parcel. The road acts as a funnel for wind transported sand, increasing the incidence and intensity of any erosion effects at the Slenes site.

Vegetation on the Slenes foredune is typically the hardy marram beach grass which would recover from any disturbance caused by construction. It is less clear what effect construction would have on revegetation of other species now existing on the lee side of the primary dune (wild strawberries; Japanese beach pea, etc.).

Construction of a dwelling on the crest of the foredune would directly encroach on the stability of the foredune. Even if it were possible to build behind the crest of the foredune, dune stability could be impaired by storm defensive measures (e.g., riprap) a homeowner on the Slenes dune might take. Secondary impacts from construction on the foredune include possible changes in water table level and quality on the deflation plain and changes in vegetative communities.

VIII

Mr. Slenes purchased his dune property in November, 1974 and has a permit for the installation of an on-site septic system. The assessed valuation of the property is $14,000. Mr. Slenes was offered $1,500 for his lots by the State Parks and Recreation Commission which opposes the subject permit.

IX

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I

By Order on Motion for Summary Judgment dated March 7, 1977, the Shorelines Hearings Board ruled in this matter that:

> even though no substantial development permit may have been required, a variance from the master program was and is required, thus necessitating the issuance of a [variance] permit.

II

Pursuant to RCW 90.58.140(12) ". . . Any permit for a variance . . . by local government under approved master programs must be submitted to the [Department of Ecology] for its approval or disapproval." The Department of Ecology regulation, WAC 173-14-150, promulgated to implement its approval authority provides:

> . . .
> VARIANCES. A variance deals with specific requirements of the master program and its objective is to grant relief when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the master program. A variance will be granted only after the applicant can demonstrate in addition to satisfying the procedures set forth in WAC 173-14-130 the following:
> (1) That if he complies with the provisions of the master program, he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the program is not a sufficient reason for a variance.
> (2) That the hardship results from the application of the requirements of the act and master programs, and not, for example, from deed restrictions or the applicant's own actions.

(3) That the variance granted will be in harmony with the general purpose and intent of the master program.

(4) That the public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied.

III

In reviewing the variance permit in this matter, Grays Harbor County was required to apply the criteria for the granting of a variance found in Chapter 34 of its master program.

(1) The hardship which serves as basis for granting of variance is specifically related to the property of the applicant.

(2) The hardship results from the application of the requirements of the Act and Master Program and not from, for example, deed restrictions or the applicant's own actions.

(3) The variance granted will be in harmony with the general purpose and intent of the Master Program.

(4) Public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied.

Failure to satisfy any one of the above will result in denial of the variance. (Emphasis added.)

IV

At no time did the appellant specifically allege that the variance granted to Mr. Slenes failed to meet the substantive criteria of either the Department of Ecology variance regulation, WAC 173-14-150, or Chapter 34 of the Grays Harbor Master Program. However, it is the Board's judgment that the Slenes application meets criteria (1) and (2) of both the regulation and the master program provision but fails to meet criteria (3) and (4). Specifically, the Board concludes that:

(1) if Mr. Slenes complies with the setback requirements he cannot make any reasonable use of his property and (2) the hardship results from the application of the requirements of the Act and master program and not from the applicant's own actions.

V

Permitting any structure to be built on such an environmentally sensitive, limited, and important natural shoreline area as the unintruded coastal dune at issue is not consistent with criterion (3), consistency with the "general purpose and intent" of the Grays Harbor Master Program. The master program specifically protects the "natural character of the shoreline" and limits "anything that will detrimentally alter the natural conditions."[3] (Emphasis added.)

VI

Criterion four of both WAC 173-14-150 and Chapter 34 of the master program requires in essence a balancing of the projected detrimental effects to the subject area from approval with the projected consequences of denial to the applicant.

The concerns of appellant regarding detrimental effects to the dune area from construction of the Slenes home include damage to the marram grass, weakening of the dune, adverse impact on quality and quantity of ground water in the deflation plain, and aesthetic degradation of a diminishing natural resource.

In this case, the characteristics of the foredune in terms of both shape and location increase significantly the potential

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3. Administration Policies, 2(b) and (c), p. 25.

physical impairment of the foredune from any construction placed upon it. In addition, the Slenes lots exemplify the type of natural undeveloped shoreline which the SMA, the regulations, and the master program promulgated pursuant thereto were intended to protect.[4] We note also that protecting such a coastal dune is consistent with a growing body of law which recognizes that the public interest in preserving shorelines and wetlands may outweigh the right of a private owner to develop his property in those circumstances where development would be damaging to to environment and hazardous to the structure itself.[5]

Mr. Slenes does have the recourse available to him of seeking compensation from the county or the state for his having no reasonable use of his property as a result of the enforcement of SMA regulations. Once the dune experience or stability is destroyed, there is no recourse.

On balance, the Board concludes that anticipated damage to the foredune from the proposed construction exceeds any ultimate detriment to respondent Slenes. The fourth variance criterion therefore has not been met in this case.

VII

Appellant's additional contentions in this matter are without merit. The Shoreline Management Act provides for a de novo hearing before

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4. " . . . the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally" RCW 90.58.020.

5. McCarthy v. City of Manhattan Beach, 41 Cal.2d 879, 264 P.2d 932 (1953); Just v. Marimette Co., 56 Wis. 27, 201 N.W.2d 761 (1972)

the Shorelines Hearings Board. The particular procedural defects cited by appellant[6] which may have accompanied the processing of the instant application were rendered immaterial and harmless as to the appellant by the de novo hearing held in this matter.

A fifth defect cited was that Slenes failed to specifically indicate in the published notice that the application requested a variance from the master program. This Board is concious of the court's concerns that notice requirements be strictly adhered to in order that the public not be "misled".[7] However, in the instant case the nature of the project, i.e., a single family dwelling constructed on the dunes was clear and the specific format for the content of the notice under the Shoreline Management Act as provided in WAC 173-14-070 was followed.

VIII

The permittee was exempt under Chapter 24 of the master program from the minimum lot size provision of Chapter (13)(1).

Appellant's contention alleging violation of the master program provision regarding setback requirements is totally inappropriate in this case wherein the essence of the case is a request for a variance from such provision.

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6. (1) failure to specifically identify each provision of the master program from which a variance was sought
(2) failure to provide a rationale for each such variance sought
(3) no record provided indicating basis for decision reached
(4) failure to provide linear public easement of at least twenty-five feet along ordinary high water line as required by Chapter 16 of the master program.

7. Barrie v. Kitsap County, 84 Wn.2d 579, 583 (1974)

IX

RCW 43.21C.070, enacted in 1973, authorized the Department of Ecology to promulgate regulations classifying those single family residences which would be exempt from the "detailed statement" requirement of the State Environmental Policy Act (SEPA), RCW 43.21C.030. Prior to the 1974 amendments to the Act, the Department of Ecology did adopt such regulations: WAC 173-34-030:

> All classes of acts of branches of government in Washington relating directly to construction or modification of individual single-family residences located in areas of the state, other than sensitive areas, are exempted from the "detailed statement" requirement of RCW 43.21C.030 of the State Environmental Policy Act of 1971. . . ."

"Sensitive areas" was defined as "any area which . . . is within 'shorelines of the state' as defined in the Shoreline Management Act of 1971." WAC 173-34-020.

However, in 1974, amendments to SEPA created the Council on Environmental Policy (CEP).[8] CEP's clear responsibility under the amendments was to prepare comprehensive guidelines for the interpretation and implementation of SEPA. No exclusion of single family dwellings from such a comprehensive review was made. The Department of Ecology's scope of authority under RCW 43.21C.070, which it exercised prior to the adoption of the CEP guidelines, was an interim measure whose purpose was subsumed and superseded by the CEP guidelines and the model

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8. RCW 43.21C.110.

ordinances drafted and adopted pursuant thereto.[9]

The subject proposal falls within the categorical exemptions of the SEPA guidelines, which exempt proposals identified therein from "the threshold determination and EIS requirements of SEPA and these guidelines." The specific language, WAC 197-10-170(1)(a) exempts "[T]he construction of any residential structure of four dwelling units or less."

Possible exceptions to the categorical exemptions do not apply in this case. The Slenes application does not involve "a series of exempt actions . . . which together may have a significant environmental impact" (WAC 197-10-190(41)); nor does the request for an area variance from setback requirements constitute a "rezone" application (WAC 197-10-170(1)).

The SEPA guidelines, WAC 197-10-174, do provide for the designation of environmentally sensitive areas by respective jurisdictions within which the categorical exemptions would not apply. However, such a designation has not been made for the subject area by Grays Harbor County.

Thus, it was not error for either the Grays Harbor Commissioners or the Department of Ecology to fail to require a threshold determination

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9. While the repeal of statutory provisions by implication is not generally favored, such an implication is warranted in this instance and meets the test of Stephens v. Stephens, 85 Wn.2d 290, 295 (1975):

> Statutes are impliedly repealed by later acts only if "(1) the later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede prior legislation on the subject; or (2) the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot be reconciled and both given effect by a fair and reasonable construction."

whose purpose was subsumed and superseded by the CEP guidelines and the model ordinances drafted and adopted pursuant thereto.[9]

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X.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Shorelines Hearings Board enters this:

ORDER

The variance permit granted to Allen Slenes by Grays Harbor County and approved by the Department of Ecology is vacated.

DATED this 29th day of June, 1977.

SHORELINES HEARINGS BOARD

CHRIS SMITH, Member
ROBERT E. BEATY, Member
WILLIAM A. JOHNSON, Member
ROBERT F. HINTZ, Member

(The other two Board members have signed a separate Findings of Fact, Conclusions of Law and Order. See following pages.)

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Vegetation on the Slenes foredune is typically the hardy marram beach grass which would recover from any disturbance caused by construction. It is less clear what effect construction would have on revegetation of other species now existing on the lee side of the primary dune (wild strawberries; Japanese beach pea, etc.)

Construction of a dwelling behind the crest of the foredune would not directly encroach on the stability of the foredune. The most apprehensive evidence in terms of impacts to dune stability involved effects from storm defensive measures (e.g., riprap) a homeowner on the dune might take. Secondary impacts from construction on the foredune include possible changes in water table level and quality on the deflation plain and changes in vegetative communities.

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(1) The hardship which serves as basis for granting of variance is specifically related to the property of the applicant.

(2) The hardship results from the application of the requirements of the Act and Master Program and not from, for example, deed restrictions or the applicant's own actions.

(3) The variance granted will be in harmony with the general purpose and intent of the Master Program.

(4) Public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied.

Failure to satisfy any one of the above will result in denial of the variance.

IV

At no time did the appellant specifically allege that the variance granted to Mr. Slenes failed to meet the substantive criteria of either the Department of Ecology variance regulation, WAC 173-14-150, or Chapter 34 of the Grays Harbor Master Program. However, it is the Board's judgment that the Slenes application meets the criteria of both the regulation and the master program provision. Specifically, the Board concludes that: (1) if Mr. Slenes complies with the setback requirements he cannot make any reasonable use of his property; (2) the hardship results from the application of the requirements of the Act and master program and not from the applicant's own actions, and (3) construction of the Slenes dwelling would not be incompatible with the general purpose and intent of the master program.

V

Criterion four of both WAC 173-14-150 and Chapter 34 of the master program requires in essence a balancing of the projected detrimental

effects to the subject area from approval with the projected consequences of denial to the applicant.

The concerns of appellant regarding detrimental effects to the dune area from construction of the Slenes home include damage to the marram grass, weakening of the dune, adverse impact on quality and quantity of ground water in the deflation plain, and aesthetic degradation. As applied to the specific facts of the Slenes proposal, as conditioned in this order, these impacts were found to be minimal and speculative. Comparing such effects with the applicant's documented investment in the site, the Board concludes that damages which would be suffered by respondent Slenes from denial exceed any reasonably anticipated harm to the area from construction. The fourth variance criterion therefore has also been met in this case.

VI

Further, it was not established that the Slenes dwelling as proposed and conditioned would violate the policies of the Shoreline Management Act itself (RCW 90.58.020), specifically those policies which require the prevention of piecemeal development and protection against adverse effects to public health, land, vegetation, and wildlife.

VII

Appellant's additional contentions in this matter are without merit. The permit as granted by Grays Harbor County and approved by the Department of Ecology did require that the dwelling be located as far easterly on the property as practical; this condition and the transcript of the public hearing reflect the expression of some concern for protection of the primary dune and natural character of the shoreline.

Thus, chapter two of Administrative Policies, 2(a) and (b) was not ignored.

VIII

The Shoreline Management Act provides for a de novo hearing before the Shorelines Hearings Board. The particular procedural defects cited by appellant[3] which may have accompanied the processing of the instant application were rendered immaterial and harmless as to the appellant by the de novo hearing held in this matter.

A fifth defect cited was that Slenes failed to specifically indicate in the published notice that the application requested a variance from the master program. This Board is concious of the court's concerns that notice requirements be strictly adhered to in order that the public not be "misled".[4] However, in the instant case the nature of the project, i.e., a single family dwelling constructed on the dunes was clear and the specific format for the content of a notice under the Shoreline Management Act as provided in WAC 173-14-070 was followed.

IX

The permittee was exempt under Chapter 24 of the master program from the minimum lot size provision of Chapter (13)(1).

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3. (1) failure to specifically identify each provision of the master program from which a variance was sought
(2) failure to provide a rationale for each such variance sought
(3) no record provided indicating basis for decision reached
(4) failure to provide linear public easement of at least twenty-five feet along ordinary high water line as required by Chapter 16 of the master program.

4. Barrie v. Kitsap County, 84 Wn.2d 579, 583 (1974)

Appellant's contention alleging violation of the master program provision regarding setback requirements is inappropriate in this case wherein the essence of the case is a request for a variance from such provision.

X

RCW 43.21C.070, enacted in 1973, authorized the Department of Ecology to promulgate regulations classifying those single family residences which would be exempt from the "detailed statement" requirement of the State Environmental Policy Act (SEPA), RCW 43.21C.030. Prior to the 1974 amendments to the Act, the Department of Ecology did adopt such regulations: WAC 173-34-030:

> All classes of acts of branches of government in Washington relating directly to construction or modification of individual single-family residences located in areas of the state, other than sensitive areas, are exempted from the "detailed statement" requirement of RCW 43.21C.030 of the State Environmental Policy Act of 1971. . . ."

"Sensitive areas" was defined as "any area which . . . is within 'shorelines of the state' as defined in the Shoreline Management Act of 1971." WAC 173-34-020.

However, in 1974, amendments to SEPA created the Council on Environmental Policy (CEP).[5] CEP's clear responsibility under the amendments was to prepare comprehensive guidelines for the interpretation and implementation of SEPA. No exclusion of single family dwellings from such a comprehensive review was made. The Department of Ecology's scope of authority under RCW 43.21C.070, which it exercised prior to

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5. RCW 43.21C.110.

the adoption of the CEP guidelines, was an interim measure whose purpose was subsumed and superseded by the CEP guidelines and the model ordinances drafted and adopted pursuant thereto.[6]

The subject proposal falls within the categorical exemptions of the SEPA guidelines, which exempt proposals identified therein from "the threshold determination and EIS requirements of SEPA and these guidelines." The specific language, WAC 197-10-170(1)(a) exempts "[T]he construction of any residential structure of four dwelling units or less."

Possible exceptions to the categorical exemptions do not apply in this case. The Slenes application does not involve "a series of exempt actions . . . which together may have a significant environmental impact" (WAC 197-10-190(41)); nor does the request for an area variance from setback requirements constitute a "rezone" application (WAC 197-10-170(1)).

The SEPA guidelines, WAC 197-10-173, do provide for the designation of environmentally sensitive areas by respective jurisdictions within which the categorical exemptions would not apply. However, such a designation has not been made for the subject area by Grays Harbor County.

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6. While the repeal of statutory provisions by implication is not generally favored, such an implication is warranted in this instance and meets the test of Stephens v. Stephens, 85 Wn.2d 290, 295 (1975):

> Statutes are impliedly repealed by later acts only if "(1) the later act covers the entire subject matter of the earlier legislation, is complete in itself, and is evidently intended to supersede prior legislation on the subject; or (2) the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot be reconciled and both given effect by a fair and reasonable construction."

Thus, it was not error for either the Grays Harbor Commissioners or the Department of Ecology to fail to require a threshold determination or E.I.S. in this matter.

XI

The primary concern expressed by the expert witnesses and shared by the Board members is the potential effect of the proposed construction on the stability or integrity of the foredune. Only if the dwelling is sited "behind the crest" of the foredune will the integrity of the dune not be impaired. It is the Board's judgment that given the physical characteristics of the Slenes dune, (i.e., steep and narrow), the westerly extension of the foundation of the dwelling should not be placed more than half the distance from the heel of the dune to its crest. However this would not, e.g., prohibit the placing of a sundeck westerly of the foundation if such structure does not touch the dune.

XII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Shorelines Hearings Board enter this

ORDER

The variance permit granted to Allen Slenes by Grays Harbor County as conditioned and as approved by the Department of Ecology is affirmed: the permit is remanded to Grays Harbor County for reissuance of the permit with the following additional conditions:

1. Permittee shall provide a linear public easement or dedication at least 25 feet wide along the ordinary high water line.

2. A survey of the subject lots shall be made and the proposed dwelling specifically and clearly sited on the property. Only if it is physically possible to site the westerly extension of the foundation of the dwelling at least 25 feet east of the crest of the foredune shall such construction be permitted.

DATED this 29th day of June, 1977.

SHORELINES HEARINGS BOARD

W. A. GISSBERG, Chairman

DAVE J. MOONEY, Member